Supreme Court, U. S.
FILED
DEC 9 1977
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

NO. 77-618

HOWARD BRAMBLETT,
Petitioner,

v.

STATE OF GEORGIA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

BRIEF IN OPPOSITION FOR THE RESPONDENT

ARTHUR K. BOLTON
Attorney General

ROBERT S. STUBBS, II
Executive Assistant
Attorney General

RICHARD L. CHAMBERS
First Assistant
Attorney General

Please serve:

JOHN C. WALDEN
132 State Judicial Bldg.
40 Capitol Square, S.W.
Atlanta, Georgia 30334
(404) 656-3353

JOHN C. WALDEN
Senior Assistant
Attorney General

JOHN W. DUNSMORE, JR.
Assistant Attorney General

I N D E X

Page

QUESTIONS PRESENTED 1

STATEMENT OF THE CASE 3

REASONS FOR NOT GRANTING THE WRIT

A. BASED UPON THE RECEIPT OF RELIABLE INFORMATION WHICH WAS SUBSEQUENTLY CORROBORATED BY THE LAW ENFORCEMENT OFFICERS THROUGH SURVEILLANCE THERE WAS SUFFICIENT PROBABLE CAUSE PLUS THE EXISTENCE OF EXIGENT CIRCUMSTANCES TO JUSTIFY THE SEARCH OF THE VAN EITHER AT THE PLACE OF ARREST, OR LATER UPON ITS BEING TOWED TO THE POLICE STATION 6

B. THIS IS NOT THE PROPER CASE IN WHICH TO DETERMINE WHETHER CONNALLY V. GEORGIA SHOULD BE APPLIED RETROACTIVELY 11

CONCLUSION 13

CERTIFICATE OF SERVICE 14

CITATIONS

Cases: Page

Adams v. Illinois, 409 U.S. 505 (1973) 12

Bramblett v. State, 139 Ga. App. 745, 229 S.E. 2d 484 (1976). . . 5

Bramblett v. State, 239 Ga. 336, 236 S.E. 2d 580 (1977) 5

Brinegar v. United States, 238 U.S. 160, 175 (1949) 9

Carroll v. United States, 267 U.S. 132 (1925) 6, 9

Chambers v. Maroney, 399 U.S. 42 (1970) 6, 10, 11

Chimel v. California, 395 U.S. 752 (1969) 12

Coleman v. Alabama, 399 U.S. 1 (1970) 12

Connally v. Georgia, 429 U.S. 245 (1977) 2, 11

Coolidge v. New Hampshire, 403 U.S. 443 (1971) 6, 8

Draper v. United States, 358 U.S. 307 (1959) 9

Escobedo v. Illinois, 378 U.S. 478 (1964) 12

Cases (continued) Page

Griffin v. California, 380 U.S. 609 (1965) 12

Hankerson v. North Carolina, ___ U.S. ___, 53 L. Ed. 2d 306 (1977) 12

Johnson v. New Jersey, 384 U.S. 719 (1966) 12

Lee v. United States, 376 F. 2d 98 (9th Cir. 1967), cert. denied, 389 U.S. 837 (1967). . 9

Linkletter v. Walker, 381 U.S. 618 (1965) 12

Mapp v. Ohio, 367 U.S. 643 (1961) . 12

Miranda v. Arizona, 384 U.S. 436 (1966) 12

Mullaney v. Wilbur, 421 U.S. 684 (1975) 12

Tehan v. Shott, 382 U.S. 406 (1966) 12

Texas v. White, 423 U.S. 67 (1975) 10, 11

United States v. Ferrara, 539 F. 2d 799 (1st Cir. 1976) 9

Cases (continued) Page

United States v. Mitchell, 538 F. 2d 1230 (5th Cir. 1976), cert. denied, ___ U.S. ___, 97 S. Ct. 1578 (1977) 9

United States v. Valenzuela, 546 F. 2d 273 (9th Cir. 1976) 9

United States v. Waddey, 536 F. 2d F. 2d 632 (5th Cir. 1976) . . . 9

Williams v. United States, 401 U.S. 646 (1971) 12

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

NO. 77-618

HOWARD BRAMBLETT,

Petitioner,

v.

STATE OF GEORGIA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF GEORGIA

BRIEF IN OPPOSITION FOR THE RESPONDENT

QUESTIONS PRESENTED

1.

Where information received by a reliable informant is later corroborated by law enforcement officers during their surveillance of a warehouse, and where the officers observed an empty van enter the warehouse premises, and later leave fully loaded during the late

night hours when they knew that no departure of merchandise from the warehouse was authorized, did these officers have probable cause to later arrest the occupants of the van and conduct a search without having previously obtained a warrant after having followed the van to a private residence other than that of the defendant?

2.

Should this Court consider the question of whether Connally v. Georgia, 429 U.S. 245 (1977) should be applied retroactively or prospectively when a search warrant was subsequently obtained after the police had earlier arrested and searched the defendant and the van he was driving following their surveillance of the defendant pursuant to information received from a reliable informant?

STATEMENT OF THE CASE

As a result of reports from various companies in the northwest Georgia county of Whitfield concerning suspected losses of yarn used in the manufacturing of carpeting, local and federal law enforcement agents received information from a reliable informant that yarn was being stolen from the Crown Cotton Mill, and that on August 18, 1974 an additional theft of yarn from the Crown Cotton Mill was to take place. The informant also told the law enforcement officers that the individual who would be involved in this theft would be driving a light colored Ford Econoline van, with a certain license number, and that the yarn would be taken from the warehouse sometime after midnight. While one of the law enforcement officers was driving his automobile in the direction of the Crown Warehouse at around 11:30 p.m. he came up behind a van, and upon checking the license number of the van discovered that it bore the same tag number of the vehicle which their informant had said would be used in the theft of the yarn from the warehouse on that particular evening. This officer also noticed that the van had transparent windows, and was empty when it entered the premises upon which the warehouse was located, and that when it left approximately an hour and a half later it was full. The law enforcement officers had also previously checked with the manager of the warehouse and had learned that there were no authorized shipments that would be leaving the warehouse on the night in question.

When this particular van departed from the mill warehouse it was followed by an agent until it parked in the driveway of a private residence which did not belong to the defendant. The officer's car pulled up behind the van after it had parked, with the officer getting out of his car and walking along side the van where he once again noticed that the windows were covered by what appeared to be cardboard boxes. This van also bore the same tag number as the van which the officer had earlier seen entering the warehouse area, and had the same tag number as had been described to the officers by the informant. Before the defendant had an opportunity to get out of the van the agent arrested the defendant and his passenger. The contents of the vehicle were identified at that time as being cartons in which yarn was customarily packaged. The officers then called for a tow vehicle so that the van could be transported to the Dalton Police Department. A search warrant was also obtained from a local justice of the peace after the van had been towed to the police department.

It is the petitioner's contention that the law enforcement officers were unauthorized to search the vehicle in the driveway of the residence of his brother, as well as conducting a later and more thorough search at the police department following the towing of the van to that location. Petitioner contends that the law enforcement officers had a sufficient opportunity to obtain a search warrant, but even under that warrant his motion to suppress should have been granted since the warrant was not obtained from a neutral and detached magistrate.

Both the Georgia Court of Appeals and the Georgia Supreme Court have found the petitioner's arguments to be without merit. Bramblett v. State, 139 Ga. App. 745, 229 S.E. 2d 484 (1976); Bramblett v. State, 239 Ga. 336, 236 S.E. 2d 580 (1977).

BEST COPY AVAILABLE

REASONS FOR NOT GRANTING THE WRIT

A. BASED UPON THE RECEIPT OF RELIABLE INFORMATION WHICH WAS SUBSEQUENTLY CORROBORATED BY THE LAW ENFORCEMENT OFFICERS THROUGH SURVEILLANCE THERE WAS SUFFICIENT PROBABLE CAUSE PLUS THE EXISTENCE OF EXIGENT CIRCUMSTANCES TO JUSTIFY THE SEARCH OF THE VAN EITHER AT THE PLACE OF ARREST, OR LATER UPON ITS BEING TOWED TO THE POLICE STATION.

The question presented to this Court by the petitioner is whether the search of his van immediately following his arrest comes within the recognized exception to warrantless searches of automobiles under Carroll v. United States, 267 U.S. 132 (1925) and Chambers v. Maroney, 399 U.S. 42 (1970), or whether the law enforcement officials were required as is urged by the petitioner under Coolidge v. New Hampshire, 403 U.S. 443 (1971) to have obtained a search warrant before going through the van, either at the situs of the petitioner's arrest, which was in the driveway of his brother's home, or later after the vehicle had been towed to the police department. Both Georgia appellate courts found that the facts in this case justified a warrantless intrusion into the petitioner's van based upon the law enforcement officers having probable cause to not only arrest, but to search the van because of the presence of exigent circumstances. Bramblett v. State, 139 Ga. App. 745, 748, supra; Bramblett v. State, 239 Ga. 336, 341, supra.

In this case the information which the law enforcement officers had received from a reliable informant was independently corroborated by an independent surveillance by those law enforcement officers, individuals who saw a van which both fit the color description and out-of-state tag as given to them by the informant enter the premises of a warehouse which had previously experienced theft of certain carpeting yarn. These officers also noted that the van when it entered the warehouse premises was empty, and that when it left it appeared to be loaded. The officers were also aware of the fact that there were no authorized shipping departures on the night in question, and that the guard made no attempt to stop the van when it left the warehouse area. Following the van's leaving the warehouse the officers followed the van to an unknown residence, a house which appeared to be unoccupied. Thus, the law enforcement people were dealing with an out-of-state vehicle which had pulled into the driveway of an unknown residence, which appeared to be unoccupied, plus the fact that there existed other participants in the scheme who could have returned to the location of the vehicle containing the stolen yarn to transport it outside the state as well as outside the jurisdiction in which a warrant could be obtained. The Georgia Supreme Court pointed out that it was quite possible that the law enforcement officers could have considered the gate guard at the warehouse as having knowledge as to where the van was parked should the officers have left the van in order to obtain a search warrant. Bramblett, supra at p. 341.

The petitioner in support of his contention that it was first necessary to obtain a warrant before his van was searched relies exclusively upon Coolidge v. New Hampshire, supra. However, as pointed out by both Georgia appellate courts the factual situation in the petitioner's case is significantly different from that which occurred in Coolidge, supra. For one thing, the law officers in this instance did not have an opportunity to obtain a warrant prior to the time they first came upon the van and subsequently followed it into the driveway of the home which turned out to be that of the petitioner's brother. Additionally, unlike the situation in Coolidge, the officers had sufficient probable cause to believe that the petitioner's van contained stolen merchandise, as in Coolidge there was no indication that the car parked in the driveway had been used for any illegal purpose. The premises upon which the petitioner's vehicle was located at the time of his arrest and subsequent search did not belong to the petitioner, as in Coolidge the search of the automobile occurred on premises owned by the defendant in that case. Further distinguishing features in this case are the fact that the vehicle had out-of-state tags, and the law enforcement officers knew from having talked with the informant that the petitioner was engaged in a business in a neighboring state, plus the fact that carpet yarn could not be made into its final product without the assistance of others who may have known the location of the vehicle at that time. Lastly, Coolidge can be factually distinguished since the driver of the vehicle in this instance was arrested before he got out

of the van, as in Coolidge the owner of the car was arrested at his house, some distance removed from the vehicle.

Under the Carroll doctrine probable cause will justify a warrantless search of an automobile when there are facts and circumstances within the officer's knowledge based upon reasonably trustworthy information which would lead them to believe as men of reasonable caution that an offense has been or is being committed. In these instances it must be kept in mind that, "In dealing with probable cause, . . . as the very name implies, we deal with probability. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." Brinegar v. United States, 338 U.S. 160, 175 (1949). Respondent fully recognizes that while the constitutional demands for a permissible search of an automobile are somewhat less stringent, law enforcement officers nevertheless must have probable cause, and that the facts in this instance unequivocally demonstrate the existence of probable cause for the search. Draper v. United States, 358 U.S. 307 (1959); United States v. Valenzuela, 546 F. 2d 273 (9th Cir. 1976); United States v. Ferrara, 539 F. 2d 799 (1st Cir. 1976); United States v. Mitchell, 538 F. 2d 1230 (5th Cir. 1976); cert. denied, ___ U.S. ___, 97 S. Ct. 1578 (1977); United States v. Waddey, 536 F. 2d 632 (5th Cir. 1976); Lee v. United States, 376 F. 2d 98 (9th Cir. 1967), cert. denied, 389 U.S. 837 (1967).

On the night the petitioner was arrested the law enforcement officials had sufficient probable cause plus exigent circumstances to justify their search of the petitioner's van either in the driveway of the petitioner's brother's home, or later after it was towed to the police department without obtaining a search warrant. "For constitutional purposes, we see no difference between on the one hand seizing and holding a car before presenting the probable cause issue to a magistrate and on the other hand carrying out an immediate search without a warrant given probable cause to search, either course is reasonable under the Fourth Amendment." Chambers v. Maroney, supra at p. 53. Accord Texas v. White, 423 U.S. 67 (1975). Since probable cause existed at the time of the petitioner's arrest to search, the subsequent action of the police officers in also obtaining a search warrant for the purposes of this discussion is moot.

B. THIS IS NOT THE PROPER CASE IN WHICH TO DETERMINE WHETHER CONNALLY V. GEORGIA[1] SHOULD BE APPLIED RETROACTIVELY.

Inasmuch as the law enforcement officers had probable cause to search the petitioner's van either at the place of his arrest or later at the police station, Texas v. White, supra; Chambers v. Maroney, supra, the subsequent application by the law enforcement officers for a search warrant to a justice of the peace who received a fee only upon the issuing of such a warrant need not be reached, neither it is necessary to reach the question of whether this practice for the obtaining of search warrants which this Court struck down in Connally v. Georgia, supra, should be applied retroactively to the present case. In short, this is not the right case for this Court to determine the question of whether Connally, supra, is to be given prospective or retrospective application, since this Court need not reach the Connally issue because of the fact that the law enforcement officers had probable cause to search without obtaining a warrant.

Should this Court, however, be interested in examining the question of whether Connally, supra, should be applied retroactively or prospectively, respondent offers the following as a reason for not applying Connally, supra, retroactively. In the past when this Court has been called upon to determine whether one of its

---

[1] 429 U.S. 245 (1977).

earlier decisions concerning a constitutional violation will be applied retroactively, the test seems to be whether the violation is one which directly affects the integrity and truth of the factfinding process of the trial rendering it a constitutional issue which addresses itself to the fundamental fairness of a trial. It thus seems that if the constitutional violation does go to the integrity and truth of the factfinding process that the decision will be applied retroactively. See Hankerson v. North Carolina, ___ U.S. ___, 53 L. Ed. 2d 306 (1977), holding Mullaney v. Wilbur, 421 U.S. 684 (1975) retroactive. See also Tehan v. Shott, 382 U.S. 406 (1966), holding that Griffin v. California, 380 U.S. 609 (1965) to be retroactive. If, on the other hand, the decision concerning a constitutional violation goes to a pretrial procedural guarantee then it appears that this Court will apply that decision prospectively. For example, Adams v. Illinois, 409 U.S. 505 (1973) declines to hold that Coleman v. Alabama, 399 U.S. 1 (1970) will be applied retroactively, as does Linkletter v. Walker, 381 U.S. 618 (1965) decline to hold that Mapp v. Ohio, 367 U.S. 643 (1961) will be given retroactive application. Likewise, in Johnson v. New Jersey, 384 U.S. 719 (1966), this Court declined to hold that either Escobedo v. Illinois, 378 U.S. 478 (1964) or Miranda v. Arizona, 384 U.S. 436 (1966) would be applied retroactively. See also Williams v. United States, 401 U.S. 646 (1971), which held that Chimel v. California, 395 U.S. 752 (1969), would only be given prospective application.

Primarily because this is not the proper case to determine the issue of retroactivity for Connally, respondent additionally urges this Court that the petition for certiorari be denied.

CONCLUSION

For these reasons, respondent respectfully urges this Court to deny the petition for writ of certiorari filed on behalf of the petitioner, Howard Bramblett.

Respectfully submitted,

ARTHUR K. BOLTON
Attorney General

ROBERT S. STUBBS, II
Executive Assistant
Attorney General

Richard L. Chambers

RICHARD L. CHAMBERS
First Assistant
Attorney General

/s/

JOHN C. WALDEN
Senior Assistant
Attorney General

John W. Dunsmore, Jr.

JOHN W. DUNSMORE, JR.
Assistant Attorney
General

Please serve:

JOHN W. DUNSMORE
132 State
Judicial Bldg.
40 Capitol
Square, S.W.
Atlanta, Ga.
30334
(404) 656-3358

CERTIFICATE OF SERVICE

I, John C. Walden, Attorney of Record for the respondent, and a member of the Bar of the Supreme Court of the United States, hereby certify that in accordance with the rules of the Supreme Court of the United States, I have this day served a true and correct copy of this Brief in Opposition for the Respondent upon the petitioner by depositing three copies of same in the United States mail, with proper address and adequate postage to:

Mr. William Ralph Hill, Jr.
P. O. Box 1350
Lafayette, Georgia 30728

This 7th day of December, 1977.

/s/
JOHN C. WALDEN